

AMENDED IN ASSEMBLY JUNE 24, 2009

AMENDED IN SENATE MAY 21, 2009

AMENDED IN SENATE MAY 12, 2009

AMENDED IN SENATE APRIL 28, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 555

Introduced by Senator Kehoe

February 27, 2009

An act to add Section 1240.055 to the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 555, as amended, Kehoe. Eminent Domain Law: conservation easement.

Existing law authorizes various agencies to acquire land for purposes related to conservation. Existing law provides for a conservation easement to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition. Existing law establishes procedures for the independent appraisal review of land to be acquired for conservation and establishes a conservation easement registry. Existing law prohibits, with a specified exception, the sale of conservation lands to another owner or the transfer of possession and control of conservation lands to another agency, unless specified actions occur.

The California Constitution permits private property to be taken or damaged for public use only when just compensation is paid. The Eminent Domain Law prescribes how that constitutionally authorized

power may be exercised and permits that exercise only for a public use. Existing law prohibits a public entity from commencing an eminent domain proceeding until its governing body has adopted a resolution of necessity that meets specified requirements.

This bill would revise the Eminent Domain Law to establish requirements for acquisition of property subject to a conservation easement. The bill would require the person seeking to acquire the property to give the holder of the conservation easement a notice containing specified information and an opportunity to ~~state any objections to~~ *comment on* the acquisition. The bill would require the holder of a conservation easement to provide notice, *under certain circumstances and* as specified, of the proposed acquisition to ~~a each~~ public entity that helped fund the purchase of the conservation easement or that imposed conditions on *approval or permitting of* a project that were satisfied, in whole or in part, by the conservation easement, *and other information, as specified*. The bill would require a person seeking to acquire the property subject to a conservation easement to respond to ~~any objections~~ *comments* in writing and provide by first-class mail the response to each easement holder or public entity that filed ~~an objection~~ *comments*. The bill would require the notice of the hearing on the resolution of necessity to be sent to any holder of a conservation easement ~~or~~ *and* public entity, as specified, and to contain information regarding the effect of failing to file a written request to appear and be heard. The bill would require that a resolution of necessity to acquire property subject to a conservation easement ~~to~~ refer to specific authority for the acquisition of the property. The bill would specify that the holder of a conservation easement is entitled to compensation under the Eminent Domain Law, *as specified*.

To the extent that this bill would impose new duties on a local governmental entity, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1240.055 is added to the Code of Civil*
2 *Procedure, to read:*

3 1240.055. (a) *As used in this section, the following terms have*
4 *the following meanings:*

5 (1) *“Conservation easement” means a conservation easement*
6 *as defined in Section 815.1 of the Civil Code and recorded as*
7 *required by Section 815.5 of the Civil Code.*

8 (2) *“Holder of a conservation easement” means an entity or*
9 *organization authorized to acquire and hold conservation*
10 *easements pursuant to Section 815.3 of the Civil Code.*

11 (3) *“Property appropriated to public use,” as used in Article*
12 *6 (commencing with Section 1240.510) and Article 7 (commencing*
13 *with Section 1240.610), includes a conservation easement.*

14 (b) *A person authorized to acquire property for public use by*
15 *eminent domain shall exercise the power of eminent domain to*
16 *acquire property that is subject to a conservation easement only*
17 *as provided in this section.*

18 (c) *Not later than 105 days prior to the hearing held pursuant*
19 *to Section 1245.235, or at the time of the offer made to the owner*
20 *or owners of record pursuant to Section 7267.2 of the Government*
21 *Code, whichever occurs earlier, the person seeking to acquire*
22 *property subject to a conservation easement shall give notice to*
23 *the holder of a conservation easement as provided in this*
24 *subdivision.*

25 (1) *The notice required by subdivision (c) shall be sent by*
26 *first-class mail and shall state all of the following:*

27 (A) *A general description, in text or by diagram, of the property*
28 *subject to a conservation easement that the person proposes to*
29 *acquire by eminent domain.*

30 (B) *A description of the public use or improvement that the*
31 *person is considering for the property subject to a conservation*
32 *easement.*

33 (C) *That written comments on the acquisition may be submitted*
34 *in accordance with paragraph (3) no later than 45 days from the*
35 *date the person seeking to acquire the property mailed the notice*
36 *to the holder of the conservation easement.*

1 (D) That the holder of the conservation easement, within 15
2 days of receipt of the notice required by subdivision (c), is required
3 to do all of the following:

4 (i) Send a copy of the notice by first-class mail to each public
5 entity that provided funds for the purchase of the easement or that
6 imposed conditions on approval or permitting of a project that
7 were satisfied, in whole or in part, by the conservation easement.

8 (ii) Inform the public entity that written comments on the
9 acquisition may be submitted in accordance with paragraph (3).

10 (iii) Notify the person seeking to acquire the property of the
11 name and address of any public entity that was sent a copy of the
12 notice pursuant to this paragraph.

13 (2) (A) The holder of the conservation easement, within 15 days
14 of receipt of the notice required by subdivision (c), shall do all of
15 the following:

16 (i) Send a copy of the notice by first-class mail to each public
17 entity that provided funds for the purchase of the easement or that
18 imposed conditions on approval or permitting of a project that
19 were satisfied, in whole or in part, by the conservation easement.

20 (ii) Inform the public entity that written comments on the
21 acquisition may be submitted in accordance with paragraph (3).

22 (iii) Notify the person seeking to acquire the property of the
23 name and address of any public entity that was sent a copy of the
24 notice pursuant to this paragraph.

25 (B) Subparagraph (A) shall apply only if one of the following
26 applies:

27 (i) The holder of the easement is the original grantee of the
28 conservation easement and there is a public entity as described in
29 subparagraph (A).

30 (ii) The holder of the easement has actual knowledge of a public
31 entity as described in subparagraph (A).

32 (iii) Recorded documents evidence the identity of a public entity
33 as described in subparagraph (A).

34 (3) The holder of the conservation easement or the public entity
35 receiving notice, or both, may provide to the person seeking to
36 acquire the property written comments on the acquisition, including
37 identifying any potential conflict between the public use proposed
38 for the property and the purposes and terms of the conservation
39 easement. Written comments on the acquisition may be submitted
40 no later than 45 days from the date the person seeking to acquire

1 *the property mailed the notice to the holder of the conservation*
2 *easement.*

3 *(d) The person seeking to acquire the property subject to a*
4 *conservation easement, within 30 days after receipt of written*
5 *comments from the holder of the conservation easement or from*
6 *a public entity described in paragraph (2) of subdivision (c), shall*
7 *respond in writing to the comments. The response to the comments*
8 *shall be mailed by first-class mail to each easement holder or*
9 *public entity that filed comments.*

10 *(e) The notice of the hearing on the resolution of necessity,*
11 *pursuant to Section 1245.235, shall be sent by first-class mail to*
12 *any holder of a conservation easement and to any public entity*
13 *whose name and address are provided as described in paragraph*
14 *(2) of subdivision (c) and shall state that they have the right to*
15 *appear and be heard on the matters referred to in Sections*
16 *1240.030, 1240.510, and 1240.610. The notice shall state that,*
17 *pursuant to paragraph (3) of subdivision (b) of Section 1245.235,*
18 *failure to file a written request to appear and be heard within 15*
19 *days after the notice was mailed will result in waiver of the right*
20 *to appear and be heard. The resolution of necessity to acquire*
21 *property subject to a conservation easement shall refer specifically*
22 *either to Section 1240.510 or 1240.610 as authority for the*
23 *acquisition of the property.*

24 *(f) Property appropriated to public use by a public entity for*
25 *purposes of Section 1240.650 includes property subject to a*
26 *conservation easement if either of the following applies:*

27 *(1) A public entity provided funds, not including the value of a*
28 *charitable contribution for federal income tax purposes, for the*
29 *acquisition of that easement.*

30 *(2) A public entity imposed conditions on approval or permitting*
31 *of a project that were satisfied, in whole or in part, by the*
32 *conservation easement.*

33 *(g) In any eminent domain proceeding to acquire property*
34 *subject to a conservation easement, the holder of the conservation*
35 *easement:*

36 *(1) Shall be named as a defendant, as set forth in Section*
37 *1250.220.*

38 *(2) May appear in the proceedings, as set forth in Section*
39 *1250.230.*

1 (3) Shall have all the same rights and obligations as any other
2 defendant in the eminent domain proceeding.

3 (h) The holder of a conservation easement is an owner of
4 property entitled to compensation determined pursuant to Section
5 1260.220 and Chapter 9 (commencing with Section 1263.010).
6 Compensation for the acquisition of property subject to a
7 conservation easement shall not be less than the fair market value
8 of the property as if it were not encumbered by the conservation
9 easement. This subdivision shall not apply if the requirements of
10 Section 10261 of the Public Resources Code apply.

11 (i) This section shall not apply if the requirements of Section
12 1348.3 of the Fish and Game Code apply.

13 SEC. 2. If the Commission on State Mandates determines that
14 this act contains costs mandated by the state, reimbursement to
15 local agencies and school districts for those costs shall be made
16 pursuant to Part 7 (commencing with Section 17500) of Division
17 4 of Title 2 of the Government Code.

18 SECTION 1. ~~Section 1240.055 is added to the Code of Civil~~
19 ~~Procedure, to read:~~

20 1240.055. (a) ~~As used in this section, the following terms have~~
21 ~~the following meanings:~~

22 (1) ~~“Conservation easement” means a conservation easement~~
23 ~~as defined in Section 815.1 of the Civil Code and recorded as~~
24 ~~required by Section 815.5 of the Civil Code.~~

25 (2) ~~“Holder of a conservation easement” means an entity or~~
26 ~~organization authorized to acquire and hold conservation easements~~
27 ~~pursuant to Section 815.3 of the Civil Code.~~

28 (3) ~~“Person” means any person authorized to acquire property~~
29 ~~by eminent domain.~~

30 (4) ~~“Property appropriated to public use,” as used in Article 6~~
31 ~~(commencing with Section 1240.510) and Article 7 (commencing~~
32 ~~with Section 1240.610), includes a conservation easement.~~

33 (b) ~~A person authorized to acquire property for a particular use~~
34 ~~by eminent domain shall exercise the power of eminent domain~~
35 ~~to acquire, for public use, property that is subject to a conservation~~
36 ~~easement only as provided in this section.~~

37 (c) ~~Not later than 90 days prior to the hearing held pursuant to~~
38 ~~Section 1245.235, the person seeking to acquire property subject~~
39 ~~to a conservation easement shall give notice to the holder of a~~
40 ~~conservation easement as provided in this subdivision.~~

1 ~~(1) The notice required by this subdivision shall be sent by~~
2 ~~first-class mail and, subject to the provisions of paragraph (2),~~
3 ~~shall state all of the following:~~

4 ~~(A) A general description, in text or by diagram, of the property~~
5 ~~subject to a conservation easement that the person proposes to~~
6 ~~acquire by eminent domain.~~

7 ~~(B) A description of the public use or improvement that the~~
8 ~~person is considering for the property subject to a conservation~~
9 ~~easement.~~

10 ~~(C) The date by which objections may be submitted pursuant~~
11 ~~to paragraph (3).~~

12 ~~(D) A description of the duty of the holder of the conservation~~
13 ~~easement, if the duty exists under paragraph (2), to provide a copy~~
14 ~~of the notice by first-class mail to each public entity that provided~~
15 ~~funds for the purchase of the easement or that imposed conditions~~
16 ~~on a project that were satisfied, in whole or in part, by the~~
17 ~~conservation easement, within 15 days of receipt of the notice from~~
18 ~~the person seeking to acquire property, and a statement that any~~
19 ~~such public entity has 30 days from the date the conservation~~
20 ~~easement holder mailed the notice to submit written objections.~~
21 ~~This description shall specifically reference paragraph (2) of~~
22 ~~subdivision (c) of Section 1240.055 of the Code of Civil Procedure.~~

23 ~~(2) (A) If the requirements of subparagraph (B) are met, the~~
24 ~~holder of the conservation easement shall provide by first-class~~
25 ~~mail a copy of the notice described in paragraph (1) to any public~~
26 ~~entity that provided funds for the purchase of the conservation~~
27 ~~easement or that imposed conditions on a project that were~~
28 ~~satisfied, in whole or in part, by the conservation easement. The~~
29 ~~holder of the conservation easement shall provide the copy of the~~
30 ~~notice to the public entity within 15 days of receipt of the notice~~
31 ~~from the person seeking to acquire property and shall also notify~~
32 ~~the person seeking to acquire property of any public entity that is~~
33 ~~entitled to notification.~~

34 ~~(B) Subparagraph (A) shall apply only if one of the following~~
35 ~~is true:~~

36 ~~(i) The holder of the easement is the original grantee of the~~
37 ~~conservation easement and there is a public entity as described in~~
38 ~~subparagraph (A).~~

39 ~~(ii) The holder of the easement has actual knowledge of a public~~
40 ~~entity as described in subparagraph (A).~~

1 (iii) Recorded documents evidence the identity of a public entity
2 as described in subparagraph (A).

3 (3) The holder of the conservation easement or the public entity
4 receiving notice, or both, may provide to the person seeking to
5 acquire the property written objections to the acquisition, including
6 identifying any potential conflict between the public use proposed
7 for the property and the purposes and terms of the conservation
8 easement. The holder of the conservation easement shall provide
9 these objections, if any, on or before 45 days after the date the
10 person seeking to acquire property mailed the notice. A public
11 entity as described in paragraph (2) shall provide these objections,
12 if any, on or before 30 days after the date a conservation easement
13 holder mailed a copy of the notice to the entity.

14 (d) The person seeking to acquire the property subject to a
15 conservation easement shall, within 30 days after receipt of written
16 objections from the holder of the conservation easement or from
17 a public entity described in paragraph (2) of subdivision (c) shall
18 respond in writing to the objections. The response to the objections
19 shall be mailed by first-class mail to each easement holder or public
20 entity that filed an objection.

21 (e) The notice of the hearing on the resolution of necessity,
22 pursuant to Section 1245.235, shall be sent by first-class mail to
23 any holder of a conservation easement and public entity of which
24 the person seeking to acquire the property has received notice
25 pursuant to paragraph (2) of subdivision (c) and shall inform them
26 that they have the right to appear and be heard on the matters
27 referred to in Sections 1240.030, 1240.510, and 1240.610. The
28 notice shall state that, pursuant to paragraph (3) of subdivision (b)
29 of Section 1245.235, failure to file a written request to appear and
30 be heard within 15 days after the notice was mailed will result in
31 a waiver of the right to appear and be heard. The resolution of
32 necessity to acquire property subject to a conservation easement
33 shall refer specifically to either to Section 1240.510 or 1240.610
34 as authority for the acquisition of the property.

35 (f) In any eminent domain proceeding to acquire property subject
36 to a conservation easement, the holder of the conservation easement
37 shall be named as a defendant, as set forth in Section 1250.220,
38 may appear in the proceedings as set forth in Section 1250.230,
39 and shall have all the same rights and obligations as any other
40 defendant in the eminent domain proceeding.

1 ~~(g) The holder of a conservation easement is entitled to~~
2 ~~compensation pursuant to subdivision (a) of Section 1260.220 and~~
3 ~~Chapter 9 (commencing with Section 1263.010). Compensation~~
4 ~~for the taking of the property subject to a conservation easement~~
5 ~~shall be no less than the fair market value of the property if it were~~
6 ~~unencumbered by that conservation easement.~~

7 ~~(h) This section shall not apply if the requirements of Section~~
8 ~~1348.3 of the Fish and Game Code apply.~~

9 ~~SEC. 2. If the Commission on State Mandates determines that~~
10 ~~this act contains costs mandated by the state, reimbursement to~~
11 ~~local agencies and school districts for those costs shall be made~~
12 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
13 ~~4 of Title 2 of the Government Code.~~